

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 25, 2005

IN RE:)	
)	
BELLSOUTH'S PETITION TO ESTABLISH)	DOCKET NO.
GENERIC DOCKET TO CONSIDER)	04-00381
AMENDMENTS TO INTERCONNECTION)	
AGREEMENTS RESULTING FROM CHANGES)	
OF LAW)	

**ORDER TERMINATING ALTERNATIVE RELIEF
GRANTED DURING APRIL 11, 2005 DELIBERATIONS**

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket ("Panel"), at a regularly scheduled Authority Conference held on May 16, 2005. The Panel considered the status of negotiations among BellSouth Telecommunications, Inc. ("BellSouth") and the intervening parties ("CLECs")¹ on the petitions for emergency relief ("*Emergency Relief Petitions*")² previously filed by the CLECs in the docket.

BACKGROUND

On February 4, 2005, the Federal Communications Commission ("FCC") released the *Triennial Review Remand Order* ("TRRO")³. Through the TRRO, the FCC reclassified certain

¹ As of May 16, 2005, the following had been granted intervention in the docket: Cinergy Communications Company, Competitive Carriers of the South, Inc.; KMC Telecom V, Inc., KMC Telecom III, LLC, MCI metro Access Transmission Services, Inc., NewSouth Communications Corporation, NuVox, Inc., NuVox Communications, Inc., Sprint Communications Company, L.P., SprintCom, Inc. d/b/a Sprint PCS, XO Communications Services, Inc., Xspedius Communications, LLC, Xspedius Management Co. Switched Services, LLC and Xspedius Management Company of Chattanooga, LLC.

² See *Motion for Emergency Relief* (February 25, 2005), *MCI's Motion For Expedited Relief Concerning UNE-P Orders* (March 2, 2005), *Cinergy Communications Company's Motion for Emergency Relief* (March 2, 2005).

³ In the *Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313, *Order on Remand*, 20 FCC Rcd. 2533 (February 4, 2005) ("*Triennial Review Remand Order*" or "TRRO").

unbundled network elements (“UNEs”) and changed the obligation of incumbent local exchange carriers (“ILECs”) to provide those UNEs to CLECs. The *TRRO* also set forth transition plans for the UNEs, which distinguished CLECs’ ongoing service to their embedded customer bases from new orders for the de-listed UNEs (“New Adds”).⁴

BellSouth and the CLECs (together, the “Parties”) had opposing interpretations of the *TRRO* provisions. BellSouth took the position that the termination of New Adds was self-effectuating as of the effective date of the *TRRO* and that BellSouth therefore was not required to provide New Adds after March 10, 2005. In contrast, the CLECs asserted that the reclassification of UNEs was a change as contemplated by the change-of-law provisions in their interconnection agreements with BellSouth. These positions were set forth in the *Emergency Relief Petitions* and BellSouth’s responsive filings. The Parties also presented oral argument before the Panel during the regularly scheduled Authority Conference held on March 14, 2005.

The Panel convened on April 11, 2005 to consider the *Emergency Relief Petitions*.⁵ A majority of the Panel (“Majority”)⁶ ordered BellSouth and the CLECs to negotiate an appropriate implementation of both the *TRRO* provisions concerning de-listed UNEs and the availability of commingling and conversion provided in the *Triennial Review Order* (“TRO”).⁷ In addition, the Majority directed BellSouth to continue accepting and processing orders for New Adds until further notice from the Authority.

⁴ *TRRO*, ¶¶ 142-145, 195-198, 226-228

⁵ See Transcript of Deliberations (April 11, 2005)

⁶ Director Kyle did not vote with the Majority. See generally Transcript of Deliberations (April 11, 2005)

⁷ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16,978 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003), vacated and remanded in part, affirmed in part, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), cert. denied, 125 S.Ct. 313, 316, 345 (2004) (“Triennial Review Order” or “TRO”)

The Majority set an initial negotiation period of thirty (30) days, through May 11, 2005.⁸ At that time, the TRA was scheduled to have an Authority Conference on May 2, 2005, before the expiration of the negotiation period. The TRA later cancelled the May 2, 2005 Authority Conference.⁹

The Hearing Officer conducted a status conference on May 2, 2005. The Parties reported that their negotiations had been unsuccessful and that they had a “fundamental disagreement” regarding some of the pending issues.¹⁰ The Hearing Officer noted that the negotiation period was due to expire on May 11, 2005, five (5) days before the next regularly scheduled Authority Conference on May 16, 2005.¹¹ BellSouth agreed to extend the time during which it would continue accepting New Adds through May 16, 2005 to allow deliberations by the Panel at the May 16, 2005 Authority Conference.¹²

FINDINGS AND CONCLUSIONS

During the May 16, 2005 Authority Conference, the Majority of the Panel¹³ noted that the negotiation period provided as alternative relief in the April 11, 2005 deliberations had expired. The Majority found that the negotiations between BellSouth and the CLECs had been unsuccessful and that further negotiations were not likely to yield results or agreement among the Parties.¹⁴ The Majority therefore concluded that the alternative relief should not be extended and should end.¹⁵

⁸ See Transcript of Deliberations, pp. 9, 13-14 (April 11, 2005).

⁹ See Transcript of Status Conference, pp. 3, 42-45 (May 2, 2005)

¹⁰ See *Id* at 29-31

¹¹ *Id* at 3, 42-45

¹² *Id*

¹³ Director Kyle did not vote with the majority but instead reiterated her position from the April 11, 2005 deliberations that the FCC expressly prohibited New Adds after March 11, 2005, that any agreement among the Parties regarding New Adds would be in contravention of the law, and that beginning on March 11, 2005 BellSouth has not been and is not required to furnish the de-listed UNEs

¹⁴ Transcript of Authority Conference, pp. 34, 36-37 (May 16, 2005)

¹⁵ *Id* at 33, 35, 47

IT IS THEREFORE ORDERED THAT:

1. The alternative relief provided during the April 11, 2005 deliberations is terminated.
2. Effective May 16, 2005, BellSouth is no longer required to provide New Adds and may reject any and all new orders for the de-listed UNEs, including new orders to serve the CLECs' embedded base of customers.



Deborah Taylor Tate, Director

Sara Kyle, Director



Ron Jones, Director